

57-8a-405. Property insurance.

(1) This section applies to property insurance required under Subsection 57-8a-403(1)(a).

(2) The total amount of coverage provided by blanket property insurance or guaranteed replacement cost insurance may not be less than 100% of the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date, excluding:

- (a) items normally excluded from property insurance policies; and
- (b) unless otherwise provided in the declaration, any commercial lot in a mixed-use project, including any fixture, improvement, or betterment in a commercial lot in a mixed-use project.

(3) Property insurance shall include coverage for any fixture, improvement, or betterment installed at any time to an attached dwelling or to a limited common area appurtenant to a dwelling on a lot, whether installed in the original construction or in any remodel or later alteration, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to an attached dwelling or to a limited common area.

(4) Notwithstanding anything in this part and unless otherwise provided in the declaration, an association is not required to obtain property insurance for a loss to a dwelling that is not physically attached to another dwelling or to a common area structure.

(5) Each lot owner is an insured person under a property insurance policy.

(6) If a loss occurs that is covered by a property insurance policy in the name of an association and another property insurance policy in the name of a lot owner:

- (a) the association's policy provides primary insurance coverage; and
- (b) notwithstanding Subsection (6)(a) and subject to Subsection (7):
 - (i) the lot owner is responsible for the association's policy deductible; and
 - (ii) building property coverage, often referred to as coverage A, of the lot owner's policy applies to that portion of the loss attributable to the association's policy deductible.

(7) (a) As used in this Subsection (7) and Subsection (10):

(i) "Covered loss" means a loss, resulting from a single event or occurrence, that is covered by an association's property insurance policy.

(ii) "Lot damage" means damage to any combination of a lot, a dwelling on a lot, or a limited common area appurtenant to a lot or appurtenant to a dwelling on a lot.

(iii) "Lot damage percentage" means the percentage of total damage resulting in a covered loss that is attributable to lot damage.

(b) A lot owner who owns a lot that has suffered lot damage as part of a covered loss is responsible for an amount calculated by applying the lot damage percentage for that lot to the amount of the deductible under the association's property insurance policy.

(c) If a lot owner does not pay the amount required under Subsection (7)(b) within 30 days after substantial completion of the repairs to, as applicable, the lot, a dwelling on the lot, or the limited common area appurtenant to the lot, an association may levy an assessment against a lot owner for that amount.

(8) An association shall set aside an amount equal to the amount of the

association's property insurance policy deductible or, if the policy deductible exceeds \$10,000, an amount not less than \$10,000.

(9) (a) An association shall provide notice in accordance with Section 57-8a-214 to each lot owner of the lot owner's obligation under Subsection (7) for the association's policy deductible and of any change in the amount of the deductible.

(b) (i) An association that fails to provide notice as provided in Subsection (9)(a) is responsible for the portion of the deductible that the association could have assessed to a lot owner under Subsection (7), but only to the extent that the lot owner does not have insurance coverage that would otherwise apply under this section.

(ii) Notwithstanding Subsection (9)(b)(i), an association that provides notice of the association's policy deductible, as required under Subsection (9)(a), but fails to provide notice of a later increase in the amount of the deductible is responsible only for the amount of the increase for which notice was not provided.

(c) An association's failure to provide notice as provided in Subsection (9)(a) may not be construed to invalidate any other provision of this part.

(10) If, in the exercise of the business judgment rule, the board determines that a covered loss is likely not to exceed the association's property insurance policy deductible, and until it becomes apparent the covered loss exceeds the association's property insurance deductible and a claim is submitted to the association's property insurance insurer:

(a) for a lot to which a loss occurs, the lot owner's policy is considered the policy for primary coverage for the damage to that lot;

(b) the association is responsible for any covered loss to any common area;

(c) a lot owner who does not have a policy to cover the damage to that lot owner's lot is responsible for that lot damage, and the association may, as provided in Subsection (7)(c), recover any payments the association makes to remediate that lot; and

(d) the association need not tender the claim to the association's insurer.

(11) (a) An insurer under a property insurance policy issued to an association shall adjust with the association a loss covered under the association's policy.

(b) Notwithstanding Subsection (11)(a), the insurance proceeds for a loss under an association's property insurance policy:

(i) are payable to an insurance trustee that the association designates or, if no trustee is designated, to the association; and

(ii) may not be payable to a holder of a security interest.

(c) An insurance trustee or an association shall hold any insurance proceeds in trust for the association, lot owners, and lien holders.

(d) (i) If damaged property is to be repaired or restored, insurance proceeds shall be disbursed first for the repair or restoration of the damaged property.

(ii) After the disbursements described in Subsection (11)(d)(i) are made and the damaged property has been completely repaired or restored or the project terminated, any surplus proceeds are payable to the association, lot owners, and lien holders, as provided in the declaration.

(12) An insurer that issues a property insurance policy under this part, or the insurer's authorized agent, shall issue a certificate or memorandum of insurance to:

(a) the association;

- (b) a lot owner, upon the lot owner's written request; and
- (c) a holder of a security interest, upon the holder's written request.

(13) A cancellation or nonrenewal of a property insurance policy under this section is subject to the procedures stated in Section 31A-21-303.

(14) A board that acquires from an insurer the property insurance required in this section is not liable to lot owners if the insurance proceeds are not sufficient to cover 100% of the full replacement cost of the insured property at the time of the loss.

(15) (a) Unless required in the declaration, property insurance coverage is not required for fixtures, improvements, or betterments in a commercial lot or limited common areas appurtenant to a commercial lot in a mixed-use project.

(b) Notwithstanding any other provision of this part, an association may obtain property insurance for fixtures, improvements, and betterments in a commercial lot in a mixed-use project if allowed or required in the declaration.

(16) (a) This section does not prevent a person suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a person at fault for the loss.

(b) Subsection (16)(a) does not affect Subsection 57-8a-404(3).

Amended by Chapter 152, 2013 General Session